United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

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P/S

76-1110

United States Court of Appeals
For the Second Circuit

THE UNITED STATES OF AMERICA,

Appellee,

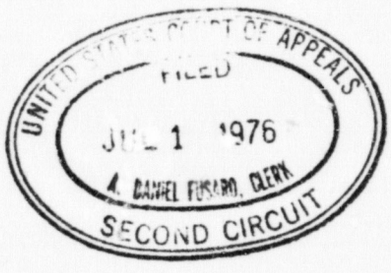
-against-

JOSEPH STASSI, a/k/a JOE ROGERS et al.,

Appellant.

On Appeal From The United States District Court
For The Southern District Of New York

APPELLANT'S BRIEF



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UNITED STATES COURT OF APPEALS
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UNITED STATES OF AMERICA,

Appellee,

- v. -

JOSEPH STASSI,

Appellant

BRIEF FOR THE APPELLANT
JOSEPH STASSI

PRELIMINARY STATEMENT

This is an appeal undertaken in behalf of JOSEPH STASSI from judgments of conviction had in the United States District Court, Southern District of New York, before a Judge and jury (Judge Knapp) for the crimes of conspiracy under the first count of the indictment in violation of 21 U.S.C. 173, 174; 21 U.S.C. 812, 841, 846; and 21 U.S.C. 963. Under the second count of the indictment charging the illegal importation of 40 kilograms of heroin in or about September 1970 in violation of 21 U.S.C. 173, 174; 18 U.S.C. 2. Under the third count of the indictment, charging the receiving, concealing, selling and the like of 40 kilograms of heroin in September 1970 in violation of 21 U.S.C. 173 and 174; 18 U.S.C. 2. Under the fourth count of the indictment charging that in or about June 1971 for the importing of a Schedule I controlled substance namely 70 kilograms of heroin in violation of 21 U.S.C. 812, 841 (a) (1) and 841 (b) (1) (A) and under the Fifth count of the indictment charging

that in or about June 1971 the illegal distribution and possession with intent to distribute a Schedule 1 substance, namely 70 kilograms of heroin in violation of 21 U.S.C. 812, 841(a)(1) and 841 (b)(1)(A).

As a consequence the appellant, JOSEPH STASSI, was sentenced on counts 1, 2 and 3 to a 30 year jail term to be served concurrently with each other, and on counts 4 and 5, 15 year jail term under each count, to be served consecutively with each other, but to run concurrently with the 30 year jail term imposed on counts 1, 2 and 3. Additionally, JOSEPH STASSI was fined the sum of $20,000 respectively on counts 1, 2 and 3 and $50,000 respectively on counts 4 and 5. The aforementioned sentences to be followed by a six (6) year special parole term.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW:

A. Did the Court below violate Rule 31 F.R.C.P. by requiring the jury to specifically respond to the Court's inquiry as to when the appellant entered the conspiracy?

B. Did the Court, in effect, direct a verdict of guilty as to the substantive counts, when it did not charge the jury that the appellant could be acquitted of some or all of such counts even though the jury could find the appellant guilty of conspiracy?

C. Was the appellant deprived of his right to summon witnesses in his defense when the Government deported Jean Claude Cetti?

D. Were the Court's comments that the Government believed the defendants guilty because this action was instituted, prejudicial to the defendant's right to a fair trial.

I. Did the prosecution exceed the limits of fair comment in the prosecution's summation to the jury?

THE PRE-TRIAL HEARING TO DETERMINE WHETHER THE APPELLANT, JOSEPH STASSI, WAS DENIED HIS FUNDAMENTAL RIGHT FOR COMPULSORY PROCESS OR TO CALL WITNESSES NAMELY, JEAN CLAUDE OTVOS, IN THAT THE GOVERNMENT, WHILE THE INVESTIGATION IN THIS CASE WAS PENDING, DEPORTED OTVOS:

A.

The Government's case against JOSEPH STASSI was based on the testimony of various accomplices who were inmates of the Correctional Institution at Atlanta, Georgia, as was JOSEPH STASSI. Two of these witnesses, one Perna and Verzino, who testified for the Government in its case against JOSEPH STASSI, are not newcomers to this Court. See U.S. v. Magnano, et al., 76-1011. As the further presentation of the facts herein will disclose, the Government claimed and offered to prove that a plot was formulated in the Correctional Institution at Atlanta to engage in the narcotic business. The source of the narcotics was to be from the brother of Otvos who was in France, and therefore Otvos, an inmate, was the "French connection". Ultimately Otvos was paroled and deported to France. That the Government was instrumental in this is borne out by the record. Otvos was an accessory and as is obvious, he was named in the indictment as a defendant.

B.

THE EVIDENTIARY HEARING:

The first witness called by the Government was J. Wayne Allgood who was employed by the United States Board of Parole as a hearing examiner for the Southeast region of the United States, which covered Atlanta, and specifically the supervision of the parole system in Atlanta Penitentiary (44)*.

Otvos was sentenced in the United States District Court, Eastern District of New York, for a narcotic offense on May 11, 1967 and he was committed to serve a term expiring January 28, 1981 (44). His net term, based on satisfactory institutional behavior, was fixed as June 23, 1976 which was also designated as the term of mandatory release (46, 47). Due to an intervening change in law, Otvos became eligible for parole in January 1974 (48). Accordingly, a request was made by the parole authorities to the Department of Justice for information as to whether Otvos was engaged in large scale crime of a "sophisticated nature" (49, Government's Exhibit 1D).

Gerald Shur, a Government attorney, was to deal with this request. The procedure was adopted because Otvos was a major narcotic offender (49, 50).

This witness' superior was Thomas Holsclaw, who died September

*( )This refers to the pagination of the Appendix.

15, 1975. It was determined that Otvos, because of the change in the law effective September 28, 1971, was afforded a parole hearing and a summary of that was received in evidence as Government's Exhibit 1C (50-52). The summary referred to remanding the case to the entire Board of Parole in Washington (52). However alternatively, the authorities in Atlanta could have acted upon the case without the remand and ultimately they did (53). Before receiving an answer to the request referring to Otvos' involvement in major crime, the authorities granted parole solely for deportation on March 3, 1975, 54, Government's Exhibit 1E).

The Immigration and Naturalization Service lodged a detainer against Otvos (55). Government's Exhibit 1D, a report from a Mr. Kinney, who was an Assistant Attorney General, was received by the authorities after a decision was made to deport Otvos (55, 56). On March 3, 1975 Otvos was deported (56). It was admitted that the regional parole authorities received the response to their inquiry but no action was taken on it (57, 58). Further copies of that response were sent to the institution at Atlanta, but not to the Department of Justice (59). Specifically a copy of that memorandum did not go to the Drug Enforement Administration or the U.S. Attorney for the Southern District of New York, or anybody else (59). On cross examination this witness testified that the Board of Parole formulated the policy as to notice of parole (60, 61). It was admitted that the parole authorities as well as the Bureau of Prisons constituted a branch of the Department of Justice. However, the witness didn't know whether

the Immigration and Naturalization Service was a branch of the Department of Justice (63). Allgood also admitted that if a warrant to hold Otvos were issued, the warrant would have been acted upon first (64). That the parole decision was received at the Atlanta institution within three (3) days after it was made, namely January 30, 1975 and was on file with the local parole authorities where it could have been available for inspection by a U.S. agent (64). An agent for the Drug Enforement Administration by merely making a telephone call could have ascertained that Otvos was to be paroled and deported (64). Algood was questioned whether in 1975 there were practices with aliens who were paroled as was Otvos and Allgood stated that there may have been others that were paroled solely to be deported (65).

Of course, Otvos' parole was limited only so that he could be deported and not otherwise (65). Copies of that parole decision were sent to the Court where the conviction of Otvos was had (Government's Exhibit 1D). Further the report from Kinney, the Assistant Attorney General, was received one day after the decision was mailed to Otvos (66). Allgood did not know whether it was reviewed by the local parole authorities (66). Further, that report never appeared in the file (67).

However the Parole Board did conduct what was termed rescission hearings which were conducted usually after parole was granted, but before the parolee's release (68, 69). Thus Otvos' parole could have been "retarded" so that a rescission hearing could have been conducted (69). Government's Exhibit 1D

could have been a basis for the rescission hearing (69). Furthermore a report such as Government's Exhibit 1D usually was received before a decision was made by the parole authorities and if it was so, this witness would have seen it and its contents would have been an element of the decisional process involved in a parole hearing (70).

Allgood also related that a pre-release analyst upon receiving receiving such a report as Government's Exhibit 1D, would have called Mr. Kinney to inquire about the contents (70). The pre-release analyst in this case, a Mr. Chait, however never remembered seeing that report (70, 71).

Allgood also confessed that there was no reason why a rescission hearing was not had in Otvos' case (71).

It further appeared that the files of the parole authorities were available to the United States Attorney, the FBI and the Drug Enforement Administration. No request from the FBI was ever made as to Otvos (72). In January 1975 the appellant JOSEPH STASSI came up for parole review (73). However the witness was uncertain as to whether the report as to Otvos was made prior to the report as to JOSEPH STASSI, the appellant (73-75).

Allgood also testified that there was evidence that the appellant was a suspect in conspiring with Otvos to import narcotics. However Allgood could not remember the details and was not able to testify "exactly" as to what that report alleged (76).

But to his "knowledge" the report did not so state (77). Counsel for JOSEPH STASSI then made a demand for that report but the U.S. Attorney stated he did not have it (77, 78). Allgood also related that if an inmate was suspected of engaging in criminal activity during his incarceration, the parole authorities would investigate the matter as that would be essential in order to arrive at a decision as to whether parole would be granted (79, 80)

Allgood on cross examination testified that Government's Exhibit 1F, a report numbered 792, was the report received by the U.S. Attorney of the Eastern District of New York in this case, where the inmate is to be considered for parole (82). In this case no other United States agency requested information as to Otvos (84). It was not the policy of the parole authorities to notify the Attorney General when parole was granted (86).

Next the Government called James Bradley, an agent of the Drug Enforement Administration (90). On direct examination he testified that either in November or December of 1974 he was investigating Otvos (91). He caused Otvos to be transferred from Atlanta to Newark, New Jersey for questioning (91). That in December 1974 Otvos was institutionalized at the West Street House of Detention and Bradley participated with another agent in interviewing Otvos (92). The other agent who participated in the interview was Anthony Mangiarcana (92). Bradley told Otvos that

he was under suspicion of participating in narcotic activities while he was an inmate at Atlanta. Otvos denied this. Bradley told him that the authorities intended to charge him with narcotic trafficking and Otvos told the agent that the conspiracy laws of the United States were unfair as he never sold or possessed narcotics at Atlanta (93).

Further Otvos refused to cooperate with the authorities (93, 94). However Otvos admitted knowing the appellant but he was not asked by the agent whether he was colluding with the appellant (94). Nor was Otvos ever asked whether he was involved with Verzino, Perna and others (95). Otvos however told this witness that he was eligible for parole in May 1975 (96). Government's Exhibit 2 was identified as a report the agent made in regard to Otvos (96). Bradley admitted that the authorities knew that Otvos was involved with the appellant in narcotic trafficking (96). However Otvos was never asked as to his involvement (97). Further that in December of 1974 there was an "on-going" investigation of the other defendants and co-conspirators and Bradley testified he did not want to refer to them when he was questioning Otvos (97, 98). It appeared that originally Anthony Stassi was indicted April 4, 1973 (97).

This witness learned that Otvos was deported one week after he was indicted (98, 99). The date of the indictment was April 1975 (99). This witness never contacted the Atlanta institution in regard to Otvos at the time he made a report marked Government's Exhibit 2A (99). There was another report by this agent designated Government's Exhibit 2B which was dated June 3, 1975 (99).

The Court's Exhibit 1 consisted of a file from the Immigration and Naturalization Service and the Court found that the contents were irrelevant to this case (102).

On cross examination this witness admitted that in November of 1974 when he interviewed the appellant he never discussed the possibility of an indictment naming him (102, 103).

But in July 1974 this witness might have discussed the appellant's involvement in the narcotic activities at Atlanta (103). This interview took place in Newark, New Jersey (103, 104). It was also admitted by this witness that the authorities believed that the appellant was involved in the activities at the institution (104, 105).

Referring to the transportation of the appellant and Otvos to Newark, New Jersey, this witness testified that the appellant was told that his brother was already indicted (108, 109). Moreover the agent considered that the appellants in this action would be indicted together with Otvos (107, 108). That since Anthony Stassi was already indicted, this witness might have related this to the other agent that a superseding indictment might be sought (108). Bradley's superior was an agent named Anthony Bocchiochio (109). Bocchiochio was in communication with the U.S. Attorney named Harry Batchelder (109). In December or January 1974 the U.S. Attorney was communicated with by the agents.

Also this agent spoke to Otvos and a **Francisca** Williams about the deportation of Otvos. Williams was with the Eastern District Strike Force. **She** was conducting an investigation for the Board of Parole regarding the relationship of Otvos with organized crime (109-111). The only information he related to this agent was that Otvos was eligible for parole in May 1975. He also had discussions over ten times with the U.S. Attorney about the possible indictment of Otvos in December 1974. However he had no discussions with the immigration authorities (112). Defendant's Exhibit A was characterized as a personal history sheet of Otvos that was prepared by this witness January 1974 (113). However this agent did not file that with the immigration authorities (113, 114). However he did not know that that report was in the file of the Immigration and Naturalization Service (114).

The statement by Otvos to this witness denying any participation in narcotic trafficking at the Atlanta institution was communicated to the superior of this witness, one Boccia (118). Around November 7, 1974 Otvos' involvement came to this agent's attention (117). But when JOSEPH STASSI was interviewed in July 1974 this witness did not have any knowledge of Otvos by"name" as being involved (118). Nor did this witness believe that other agents knew that Otvos by "name" was so involved. However other agents might have known that a "Frenchman" was involved (118).

There was further testimony that there was a liason between the Drug Enforement Administration and the French National Police but the witness was not sure whether that relation specifically involved narcotic offenders to be deported to France from the United States (129). In 1973 the witness first learned of the appellant's possible involvement and he learned that from Perna. But at that time he didn't learn of Otvos (131). Either in December 1974 or January 1975 the agent learned of the appellant's involvement from Verzino (131). He also learned of Otvos' participation either in October or November 1974 (131, 132).

The witness anticipated the indictment of Otvos in January 1975. However he never communicated with the Bureau of Prisons or the Board of Parole to ascertain whether the release date given to him by Otvos was correct (133).

Carlo Boccia, another federal agent testified (135). He was affiliated with the Drug Enforement Administration and he testified that he was a group supervisor. Either in November or December of 1974 he interviewed Otvos with another agent (136). He also questioned Otvos as to the appellant and Otvos told him that he knew the appellant (137, 138). It appeared that JOSEPH STASSI was transported to Newark, New Jersey with Otvos (138). However the witness could not recall whether he ever asked Otvos whether he and the appellant were involved in narcotic transactions. He did ask Otvos to cooperate (138).

Boccia admitted that when he questioned Otvos there was a pending investigation as to the participation of Otvos with the appellant in regard to narcotics (139). That he may have also questioned Otvos about Perna and Verzino (139, 140). Boccia admitted that there was "mention" about Otvos' eligibility or possible release on parole (140). However neither this witness or any other agent had any contact with the Parole Board or the Immigration and Naturalization Service about Otvos (140).

On cross examination Boccia admitted that when JOSEPH STASSI was interviewed in New Jersey, the witness believed that he was questioned about Otvos (145). Of course, the investigation concerned narcotic transactions at the institution in Atlanta.

There was also read into the record a communication that Otvos was set for parole and deportation March 3, 1975 and was expected to arrive in Paris March 4, 1975 (153, 154).

Anthony Mangiaracina, another federal agent with the Drug Enforcement Administration testified (154). On direct examination he testified that in 1974 he was stationed at the Newark District Office (155). He attended the questioning of Otvos (155, 156). Otvos was asked whether he would be cooperative and whether he knew the appellant JOSEPH STASSI (156). Otvos replied that he was "not affiliated" with the appellant and this witness stated he "must have" questioned Otvos about narcotic trafficking with the appellant. Otvos denied this (157).

This witness was told by Bradley, the prior witness who also was an agent, that the involvement of Otvos consisted of procuring narcotics from Europe (160).

At this hearing the appellant also testified (176). He related that he was removed from Atlanta to Newark July 4, 1974 (176, 177). He was questioned by three agents and the U.S. Attorney (177). At that interview he told them that he had no relationship with the "Frenchman" and that aside from knowing inmates, such as Perna and Verzino, he had no other relationships (178). At a second interview he was questioned about Otvos who was also transferred with him to Newark (180).

JOSEPH STASSI told the Court that if Otvos were available he would call him as a witness (181). That Otvos would be called as a witness to rebut or deny what the Government witnesses Verzino and Perna would testify to (181). That without Otvos, Perna and Verzino could testify as to anything (181).

In April 1975 the appellant first learned that he was indicted (181, 182).

The record shows that the Government did not know where Otvos was located at the time of the trial (190).

The Court's findings are found on pages 193-195 of the Appendix.

STATEMENT OF THE CASE AGAINST
THE APPELLANT JOSEPH STASSI:

THE FACTS:

Mario Perna testified for the Government (209). He formerly was an inmate at Atlanta (210). He entered into narcotics trafficking there with Verzino (210). Verzino and Perna planned to contact "whatever" Frenchman they could in order to import narcotics (210). Perna met the appellant JOSEPH STASSI in 1969 (210, 211). JOSEPH STASSI was known to him as an "old man" (211). He also met Joseph Condello and Sorenson, as well as other inmates (212). Perna would have Verzino close with the appellant JOSEPH STASSI and Kapatos (214).

Perna and Verzino spoke to Otvos about importing narcotics and Otvos replied that there was "no problem" provided they had an outlet in the United States who could handle the import (215).

Perna and Verzino were not successful in procuring an outsider. Verzino and Perna spoke to JOSEPH STASSI in January or February 1970. JOSEPH STASSI allegedly told him that he would speak to his brother, Anthony Stassi (217).

Ultimately Verzino stated he would arrange with Otvos for a letter of introduction to Otvos' contact in France, so that Anthony Stassi could meet the persons who would arrange for the importation to the United States (219). Verzino finally obtained this letter which was written in French on onion skin paper so that it could be concealed (219). It was addressed to the brother

of Otvos in France (219, 220). Perna learned that JOSEPH STASSI had a visit from his brother Anthony Stassi in the beginning of 1970 (220, 221). JOSEPH STASSI told Perna that his brother would go to France to make contact and that upon his return Anthony Stassi would let JOSEPH STASSI, the appellant, know the results of the visit (221). According to Perna there was also talk of procuring the purchases of the import and the Malizia brothers were mentioned (221, 222). Perna also spoke about Sorenson as being a possible outlet or dispenser of the narcotics (222, 223). This was explained as concealing Anthony Stassi as being active in the enterprise (223, 224). There was also a proposal that Anthony Stassi would operate with Sorenson upon Sorenson's release from the institution (225, 228).

Perna further narrated as to how the proceeds would be divided between him and Verzino (227, 228). Thus according to Perna, JOSEPH STASSI met Sorenson and there was a discussion as how Sorenson would meet Anthony Stassi when Sorenson was released (229, 230). In November or December of 1970 Sorenson was released.

In a later conversation with the appellant JOSEPH STASSI, Perna and Verzino were told that Anthony Stassi was in France and arrangements there were made. That the brother of Otvos initially was reluctant to deal with Anthony Stassi but it was finally agreed upon because Otvos' brother had a common acquaintance named Mondolone who knew the appellant (232).

Subsequently the appellant received visits at the institution from his brother Anthony Stassi (232, 233). Perna also testified that Anthony Stassi met the Malizia brothers also known as the Pontiac brothers and that a shipment from France was anticipated (233). That the Frenchman was to communicate with Anthony Stassi by way of a "letter drop" in New York City (234).

Perna also explained that his share of the proceeds was changed from cash to narcotics (for resale) (234, 235). Verzino's outlet was to be "Suzie" who would get the narcotics from Sorenson (235). Suzie was Verzino's wife and her full name was Susan O'Neill (236).

Perna was also told by the appellant that his brother, Anthony, missed meetings in New York because of late deliveries at the "letter drop" (237, 238).

Finally in October 1970 the appellant told Perna that the deliveries were made and that future deliveries were anticipated (239, 240). Further that Anthony Stassi personally delivered narcotics to the Pontiac brothers and was paid (241).

Meanwhile Perna would have Verzino telling him that Sorenson received the delivery but this was from a source other than the appellant (241, 242). It next appeared that Sorenson had a disagreement with Suzie over $2,500 and was therefore disinclined to make any deliveries to her. This was in October 1970 (242, 243).

Continuing his narrative, Perna related that Verzino told him that JOSEPH STASSI told him that the balance of the export was delivered. That JOSEPH STASSI told his brother to settle the dispute between Suzie and Sorenson (243-[illegible]). Perna believed that the total quantities that were imported were between 130 to 140 kilos (244).

Perna was allegedly told by the appellant that his share in the enterprise was to be two (2) kilos of heroin plus a bonus of another kilo (249). Verzino also told Perna that Anthony Stassi told his brother, the appellant JOSEPH STASSI, that a third delivery was expected in January 1971. It appeared that this never arrived and this was discussed with the appellant, Verzino and Otvos (250, 251). Otvos, according to Perna, also stated that his brother in France was "looking out for his end" (251). JOSEPH STASSI told Perna that his brother was waiting to hear about the third load that never arrived. This was in March 1971 (252).

Perna also recounted many conversations with Otvos (252).

Thus Perna spoke to Otvos who told him that "Frenchmen" and South Americans were asked by Verzino for their addresses as he wanted to transact with them. When Otvos confronted Verzino about this, Verzino denied this (255, 256).

According to Perna, disharmony arose between Verzino and JOSEPH STASSI because Verzino was talking to other inmates at the institution about the narcotics business. Otvos allegedly told this to the appellant (256).

It next appeared that "Suzie" who was affiliated with Verzino, was also talking about Sorenson's way of life since he acquired his newly found source of income (256, 257). As a result there was attributed to the appellant a statement that it was necessary to murder Suzie, Sorenson and Verzino (257-259).

The appellant asked Perna to send him some poison after Perna was released so that it could be administered to Verzino by the appellant himself (259). Further, that Anthony Stassi would help Perna kill the others (260). The appellant allegedly also told Perna not to discuss the narcotic venture with Verzino (264).

When Perna was released he was to meet Anthony Stassi (265 , 266).

Perna was released May 5, 1972 (265).

"Suzie" paid Perna for his share of the venture by giving money to his niece (266).

Perna also described his meetings with Anthony Stassi after his release from the institution (267-269).

Perna finally related how he and Anthony Stassi planned to kill Sorenson (273, 274).

Having earned his freedom and in the spirit of free enterprise, Perna described how he met Malizia and agreed to go into the narcotic business with him (275, 276).

Upon release, Perna offered to buy the narcotics from Anthony Stassi that would be imported from Mexico. Malizia also allegedly told Anthony Stassi that he would have purchased the import from Mexico. Subsequently and after release, Perna met Sorenson who told him that he heard from the "old man", (277-282).

Anthony Stassi also told Perna that he went to France and expected a shipment from Canada asking Perna and Malizia whether they would be interested in purchasing it (282, 283).

Perna also spoke to Verzino after Verzino was released and was told that the appellant was to call his wife's home and that Verzino was to be there to receive the call (288).

On cross examination Perna stated that the appellant had no stake in Perna's gambling and narcotic business conducted at the institution (289). That Malizia and Perna entered into another narcotic partnership. That one "Tony West" was his other source of narcotics (290).

That he planned to kill Verzino because Verzino was talking about the narcotic activities that Perna was engaging in with his new partner, Malizia (292).

When he first began cooperating he never mentioned the appellant's name (283).

Perna also narrated his various jail escapes but stated that the appellant had nothing to do with that (294).

Finally, Perna admitted that lying was part of his life-style (300).

On re-direct examination, Perna testified that when he was recaptured after his jail break he told Bradley, the agent, about transactions and conversations with the appellant, Otvos and the others, (305).

Next Joseph Condello was called by the Government (306). He knew the appellant, Sorenson and Anthony Stassi, as well as others (307, 308). He met the appellant at the institution in Atlanta. Condello was an inmate from 1968 to 1972 when he was transferred to another institution (308, 309). However while at the institution in Atlanta he did not associate with the appellant (309, 310). But he knew that the appellant was also known as the "old man" (311). He also knew"Jean Claude" but didn't know his last name (312). He heard Verzino, Sorenson and Perna talk about importing narcotics from France through Canada (315, 316, 319). He also heard the appellant mention Verzino (320, 321). This was in connection with killing Verzino and "Suzie" (322,323). He claimed that the appellant stated it was best that Verzino not be killed (323). Later he spoke to the appellant who mentioned about Condello getting into the narcotics business after he was released from the institution and stated he would get in touch with him. The last time he saw the appellant was at the institution in Atlanta (325-327).

On cross examination he testified that Perna and Malizia were his source of narcotics (336). This was distinct from the appellant (337).

When he started to cooperate the agents told him that they would try to help him (337). Condello spent 1200 days at the institution in Atlanta and the only time the appellant asked to talk to him was when he was being released (354).

Next, James Bradley an agent with the Drug Enforcement Administration testified (361). He told the jury that Perna was arrested February 1, 1974 (363). Between November 1973 and February 1, 1974 Bradley met with Perna and Condello. Bradley acting in an undercover capacity obtained narcotics from Perna (363). On December 27, 1973 Perna and Condello met with him (363). Perna told him that he did not deal with Anthony Stassi (364). This related to a shipment of narcotics that was to be exported from Canada, Perna explaining that Malizia, his partner, was not interested (364, 365).

When Bradley interviewed Condello after Condello's arrest, Condello told him of the conversation he had in October 1973 at the institution in Atlanta (369). Condello also told Bradley that he conversed with the appellant about his joining with the appellant after he, Condello, was released (367). Also during his cooperation with Bradley, he related the episode as to importing poison into the prison so that the appellant could kill Verzino (367).

Apparently Bradley also interviewed Perna after his arrest and Perna told him of his conversation with Otvos (369-374). Bradley was then allowed to give his summary of the facts as part of the evidence in this case.

The next witness the Government called in regard to the appellant was Anthony Verzino (393). Part of his penal background can be gleaned from pages 394 to 395 of the Appendix. He also admitted testifying falsely in his own trial (395).

Verzino arrived at the institution in Atlanta in 1967. He met the appellant there for the first time (396). The appellant was known to him as "Joe Rogers" and the "old man" (396). Verzino also identified other defendants in the courtroom who were inmates at that institution in Atlanta (397, 398). Finally, he testified he met Anthony Stassi (399). Verzino then described his partnership with Perna at Atlanta which involved narcotics (400). He further testified as to others he met including Condello, Sorenson and Kapotos (400, 401).

Verzino described his liason with Otvos. His meeting with Otvos arose when the appellant asked him to ask Otvos about a person named Montelone, whom the appellant allegedly knew (401, 402). Otvos told Vezino about a narcotics distribution through Sorenson (403). Verzino spoke to Perna about this (404, 405).

At a later meeting, Otvos told Verzino that he was trafficking in narcotics while imprisoned at Atlanta (405). The ou side conduit for the distribution was one Ralph Santana, but Otvos told him that he had difficulty with Santana (405, 406). Otvos then asked Verzino whether he could handle the distribution (406). Verzino spoke to the appellant who complained of the high price that Otvos wanted (406, 407). Eventually the arrangement came to fruition (408, 409, 416). The source was to be Otvos' brother in France (409), and a scheme was hatched at to how the brother of Otvos would be assured that the representative that was sent to h was trustworthy (409-411).

It appeared that the appellant's brother Anthony Stassi was to be the emi y to the brother of Otvos (411). Verzino described the addr s where the brother of Otvos could be found (411, 412). There was a further description of how a note written on onion paper would be given to the brother of Otvos unsigned but referring to an incident between Otvos and his brother so that the brother would know that Otvos was the communicant (412-414). The courier to France was to have the name "Duval". This was to be Anthony Stassi (415).

Verzino also conversed with the appellant as to how Anthony Stassi would meet the brother of Otvos in France and arrange terms (417, 418). Verzino also spoke to Perna about this and discussed how he and Perna would take their profits, that is, either in cash or narcotics, also discussing the distribution of the narcotics with Perna (417-420). "Suzie" was identified as Verzino's wife.

According to Verzino, the appellant found out that his brother, Anthony, succeeded in having the narcotics exported from France (422-424). Verzino also told the appellant that he wanted his profit in narcotics with an option to purchase narcotics wholesale (424). Finally, the appellant was said to have told this witness that his brother met some "Frenchman" in New York and arrangements were made for deliveries (427). In the summer of 1970 the appellant and this witness spoke to Otvos about delays in the shipments, and Otvos told them that the narcotics would come from Canada (429, 430). Finally, Verzino's wife Suzie told him that Sorenson delivered two (2) kilos of heroin to her and described how she disposed of them (430, 431). The appellant also told him that 120 kilos of heroin were received (431, 432). Later the appellant told him that he disapproved of Verzino's wife Suzie being involved (433).

In another conversation with Verzino, the appellant allegedly told him of another shipment of 140 kilos of heroin (436). In regard to a third shipment, this never arrived although the appellant allegedly spoke about it (438, 440). Later, clouds appeared on the horizon when it was discovered that money was missing and that Sorenson was involved in this. Verzino spoke to Perna about the appellant's suspicion of the others not accounting for the proceeds of the sales (442, 443). There was also a

conversation attributed to the appellant regarding the seizure of narcotics in France and also that Anthony Stassi was offered narcotics in Canada (447, 448).

When Verzino was released, the appellant told him to wait until he heard from Anthony Stassi who would communicate with him. At any rate, Verzino told Stassi that he intended to start his own narcotic enterprise (449). He then described his relationship to the Malizia brothers and also getting narcotics from other sources (452-454).

Verzino was arrested February 25, 1974 (462). He agreed to cooperate with the authorities in August 1974 (464).

Verzino also denied that while incarcerated in Atlanta, the appellant JOSEPH STASSI observed him in a homosexual act (515, 516). Further that he never told the appellant he would "get even" with him because the appellant caught him in such an act (516).

The Government also called an agent named Korniloff (525). According to him he participated in interviewing Verzino in March of 1975 with the Government attorney who prosecuted this case participating (525, 526). The U.S. Attorney told Verzino of a plot to kill him, his wife and Sorenson, and that the appellant was involved in it (526). Verzino told this witness he didn't believe that (527).

Later Verzino recounted the appellant's involvement and Korniloff, in effect, summarized the evidence in this case coming from Verzino (528-531).

THE DEFENSE:

The appellant put in a defense by calling various witnesses who were inmates at the Atlanta institution or who otherwise knew the witnesses who testified against him, namely Perna and Verzino. Additionally, the appellant himself testified and denied that he participated in any narcotic transactions with Verzino, Perna or Condello.**

JOSEPH STASSI testified. He explained that he was to be paroled December 14, 1975. That he was married and his wife's name was Frances and she resided at 1944 East 21st Street in Brooklyn, and he was the father of two children (602, 603). He described his prison life, having been sentenced in 1967. His record in the institution was clear and he was never subjected to any disciplinary action (603, 604).

Asked about the charges that he was on trial for, the appellant clearly stated that he was not guilty, that he never entered into any agreement with Perna, Verzino or anybody else, including Otvos (606). He denied that he ever spoke to Perna or Verzino or Condello about importing narcotics into the United States (606, 607). Furthermore, he never discussed having poison brought into prison to kill anybody (607).

**It is to be noted that this Court held in U.S. v. Frank, 494 F. 2d 145 (Cir. 2d, 1974) at page 153 that:

"In passing upon the sufficiency of the evidence, the Court had only the prosecution's case, the defense having offered none... But the self-incrimination clause does not elevate a defendant's silence much less the failure to present any defense case, to the level of a convincing refutation. When a defendant has offered no case, it may be reasonable for the jury to draw inferences from the prosecution's evidence which would be impermissible if the defendant had supplied a credible, exculpatory version..."

In regard to Perna, STASSI testified that he never had any real personal discussions with Perna, but merely knew him because he was an inmate (608). He also had at most, a casual relationship with Sorenson, namely he was never intimate with him or ever had any personal discussions with him (609, 610). Nor did he know the co-defendant Alaimo.

STASSI related that he was friendly with Verzino (610). Their relationship began when he found out that Verzino's probation report related to him and that aroused his interest and then he became friendly with Verzino (611, 612).

In regard to his previous conviction, the appellant denied that he was guilty and explained the review of that conviction that he was pursuing (612, 613). Furthermore, Verzino apparently was helping him because according to STASSI, Verzino knew the law (613, 614). He also described litigation regarding his parole status (615).

Verzino did speak about his narcotic activities (616). Verzino told the appellant that when he was released he was going to go into the narcotic business. The appellant explained Mondo_ino as being a co-defendant of his in a prior case and that Verzino knew that fact (617, 618). However, the appellant did not know Mondolino, who was a Frenchman (618).

The appellant explained that his wife knew Verzino's wife, that they lived in the same neighborhood and Verzino's wife would visit. That when Verzino called his wife who did not respond to the telephone call, he would call Stassi's wife so that she could call his home to find out whether his wife was there (621).

He then described the homosexual incident involving Verzino and somebody else (622-624). Discovering Verzino's sexual tendencies, he told Verzino not to bother with him (622-624). He thereafter ignored Verzino (625).

Verzino's wife lived near the premises where the appellant's wife lived, as he previously testified. When the appellant called his wife, Verzino was there and he spoke to him (626, 627).

Next, the appellant called various inmates to testify as to the activities of Verzino and Perna at the institution. These persons testified that there was an incident where the appellant saw Verzino committing a homosexual act and told him to stay away from him (561-563, 568-571, 579-581). As a matter of fact, Harold Robbins, an inmate, testified that he participated in a homosexual act with Verzino (585-587). That the appellant saw the incident (587, 588). That Verzino even before being discovered by the appellant, had a homosexual relationship with this inmate (588, 589). The incident occurred at the prison library and Verzino was observed cursing the appellant who was walking away from him. Verzino openly threatened to kill the appellant and stated that

he would seek revenge (595-598).

The witnesses further testified that in boasting about his narcotic activities, Verzino never mentioned the appellant but did say he would frame the appellant (706-708).

Evidence was adduced that Verzino spoke to an inmate about importing narcotics and asked the inmate whether he knew "Latins", further asking the inmate to make a connection for him but never mentioning the appellant (713-717, 720-721).

Perna discussed his involvements with the law and told inmates that the authorities were pressuring him to build a case against the appellant (721, 759).

Other witnesses testified as to the criminal activities of Perna and Verzino while they were institutionalized at Atlanta (738, 739-741). Neither Perna nor Verzino ever mentioned the appellant (741, 742). Another inmate testified that he knew Condello, Perna and Verzino (773). He casually knew the appellant (774). That he never heard the appellant say he was going to kill Verzino (775).

Another Frenchman named Orsino, testified he was also an inmate; that he knew Verzino who asked him whether he could arrange any sources of narcotics in France (789-791).

POINT I:

THE COURT BY DIRECTING THE JURY TO FIND A SPECIAL VERDICT AS TO WHEN THE APPELLANT BECAME A MEMBER OF THE CONSPIRACY, AND THE CHARGE TO THE JURY THAT THE APPELLANT COULD BE CONVICTED UNDER THE SUBSTANTIVE COUNTS, IF HE WERE FOUND TO BE A MEMBER OF THE CONSPIRACY, PREJUDICED THE APPELLANT'S RIGHT TO A FAIR TRIAL AND A FAIR JURY CONSIDERATION.

The first count charged a conspiracy commencing on or about January 1, 1970 and continuing to and including December 30, 1972. The date of the last overt act was alleged to be on or about June 1971. The statutory predicates for the conspiracy count was former Sections 173 and 174 of 21 U.S.C. and the succeeding sections 812, 841, 846, 963 of 21 U.S.C.

Sections 173 and 174 of 21 U.S.C. went into oblivion before May 1, 1971, that being the cutoff date. Thereafter, the new narcotic sections underlying this prosecution went into effect. See Bradley v. United States, 410 U.S. 605 (1973).

The Court's charge to the jury was to the effect that the appellant JOSEPH STASSI could be convicted of the substantive counts if the jury found him to be a member of the conspiracy and that the acts constituting the substantive counts, were performed pursuant to the conspiracy, (1071, 1072). This charge, it is believed, was based on the ruling of Pinkerton v. U.S., 328 U.S. 640 (1946).

At the conclusion of the Court's charge, the Court informed the forelady that a form known as "Specimen Verdict as to Each Defendant" was available so that the jury could record their verdicts. Then the Court stated as follows:

> "I want to call your attention to the last paragraph of that copy:
>
> > 'In the event of a guilty verdict on count 1 (conspiracy) answer the following question: 'Did the defendant become a member of the conspiracy before or after May 1, 1971? (Before _____ After _____).'" (1080, 1081).

It seemes apparent to counsel that the purpose of this type of instruction was to impose the penal liability mandated for violating formerly existing sections 173 and 174 of 21 U.S.C. (see U.S. v. Bradley, supra).

Coupled with that instruction was the Court telling the jury that the jury didn't know the "details" of that question but that it was "procedurally important", the Court stating that it would not give the reasons to the jury.

It is respectfully put that this type of procedure constituted a direction of the jury to arrive at a special finding. Rule 31 of the Rules of Criminal Procedure relates to the verdict. It has five subdivisions. Subdivisions (a) to (d) describe the disposition a jury can make. There is not one provision in there that provides for the procedure adopted by the Court below.

Meanwhile subdivision (e) of Rule 7 headed "Criminal Forfeiture" provides that if the charge alleges an interest or property subject to a forfeiture, a special verdict should be returned to the extent of the property interest. That is the only provision in this Rule related to special verdicts.

The appellant is not objecting to the fact that a form in writing was given to the jury or a chart to aid them. That is not the issue at this phase of this appeal. That practice was permissible, see U.S. v. Gallishaw, 428 F. 2d 700 (Cir. 2d, 1970).

Rather counsel is urging that this procedure violated the ruling in U.S. v. Spock, 416 F. 2d 165 (Cir. 1st, 1969). On page 180 it was stated in part that:

> "Of more substantive importance is the fundamental difference in the jury's function in civil and criminal cases. In civil trials the judge, if the evidence is sufficiently one-sided, may direct the jury to find against the defendant even though the plaintiff entered into the case bearing the burden of proof... In a criminal case the Court may not order the jury to return a verdict of guilty no matter how overwhelming the evidence of guilt. ... Put simply the right to be tried by a jury of one's peers finally exacted from the King would be meaningless if the King's judges could call the turn..." (At pages 180-181, internal quotations and citations omitted).

On pages 182 it was further stated in part that:

> "We are less concerned by the jury's possible fear of subsequent criticism with respect to special findings than we are with the subtle, and perhaps open, direct effect that answering special questions may have upon the jury's ultimate conclusion. There is no easier way to reach, and perhaps force, a verdict of guilty, then to approach it step by step. A juror wishing to acquit may be formally catechized. By a progression

> of questions each of which seems to require an answer unfavorable to the defendant, a reluctant juror may be led to vote for a conviction which, in the large, he would have resisted. The result may be accomplished by a majority of the jury, but the course has been initiated by the judge, and directed by him through the frame of the questions."

In other words, the jury speaks for the sovereign and is the supreme fact finder in the criminal process as held by this Court in U.S. v **Maybury,** 274 F. 2d 899 (Cir. 2d, 1960).

The prosecution in framing the indictment, joined two conspiracies in one count. Two conspiracies not on the theory of a misjoinder of defendants in violation of Rules 8 and 14 of the Rules of Criminal Procedure, and disparate transactions, but two conspiracies because two separate statutes were involved. Two separate statutes that did not co-exist in point of time but succeeded each other. This it is submitted caused the resulting instruction as a special finding by the jury, not provided for in Rule 31. Yet Rule 8 of the Federal Rules of Criminal Procedure provides in subdivision (a) that offenses may be joined in one indictment in separate counts for each offense if the offenses are of the same or similar character.

Certainly, if two conspiracies can be joined in one indictment and in separate counts thereof even though there are overlapping acts, it would seem that two separate conspiracies can be charged in separate counts in an indictment where the statutes are different. See U.S. v. Papadakis, 510 F. 2d 287 (Cir. 2d, 1975), at page 296 it being stated in part that:

"While it is not unusual so to charge, there is no reason why people cannot enter into two separate criminal agreements more or less at the same time... If they do they come within the joinder rule F.R.Cr.P. Rule 8, subject to severance in the interest of justice..." (Internal citations and quotations omitted).

POINT II:

THE COURT IN EFFECT GAVE NO OPTION TO THE JURY TO ACQUIT THE APPELLANT, JOSEPH STASSI, OF THE SUBSTANTIVE COUNTS EVEN IF HE WAS FOUND BY THE JURY TO BE A MEMBER OF THE CONSPIRACY.

As noted above, the Court instructed the jury as to the appellant's liability under the substantive counts, if the appellant were found to be a member of the conspiracy by the jury (1070, 1071, 1040, 1041, 1068).

In other words, the Court's charge was to the effect that if the jury acquitted the appellant of the conspiracy it necessarily would have had to acquit him under the substantive counts. However the Court left no room in its charge for the jury to acquit the appellant of all or some of the substantive counts, even if the jury found the appellant guilty for the conspiracy. Thus it is put that the jury could have convicted or acquitted the appellant of some but not all of the substantive charges. While Pinkerton v. U.S., supra, was the basis for that portion of the charge, it is submitted that the ruling in Pinkerton did not foreclose separate jury consideration of each count of an indictment, and a jury decision as to each count, such jury verdict or verdicts to be either inconsistent with the other verdicts or consistent

therewith. This is precisely why the jury system is such an integral part of a criminal action. See 6th Amendment to the Federal Constitution.

In short, the Court directed a verdict of guilty as to the substantive counts in its charge to the jury.

In U.S. v. Dunn, 284 U.S. 390 (1932) the United States Supreme Court held that inconsistent verdicts rendered by a jury are quite proper. Thus, each count of an indictment is a separate indictment. The joinder of the counts is for the convenience of the Government and is an economical measure. See also U.S. v. Mayberry, 274 F. 2d 899 (Cir. 2d, 1960), supra. (See also U.S. v. Dotterweich, 320 U.S. 277 (1943) opinion of Mr. Justice Frankfurter).

POINT III:

THE APPELLANT WAS DEPRIVED OF A DEFENSE BY THE DEPORTATION OF OTVOS.

The 6th Amendment to the Federal Constitution provides for compulsory process in a criminal action. It is submitted this should be read together with the due process clause of the 5th Amendment to the Federal Constitution.

As was stated in Chambers v. Mississippi, 410 U.S. 284 (1973) at page 294:

> "The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. The right to confront and cross-examine witnesses and to call witnesses in one's own behalf has long been recognized as essential to due process..." (Internal citations omitted).

It was further stated on page 302 of 410 U.S. that:

> "Few rights are more fundamental than that of an accused to present witnesses in his own defense..." (Internal citations omitted).

In U.S. v. Mendez-Rodriguez, 450 F. 2d 1 (Cir. 9th, 1971), it was held that there was a Government policy to deport some aliens who were arrested for illegal entry into the United States. The appellant was charged and convicted for conspiracy to smuggle aliens into the United States. He was arrested while in the act of transporting aliens. Some aliens were held as material witnesses by the Government, some were deported. The appellant moved to dismiss the indictment because some of the aliens he was with at the time of his arrest and who were deported, may have been called as defense witnesses. These possible witnesses were deported to Mexico and their whereabouts were unknown. In dismissing the indictment it was stated on page 5 in part that:

> "Appellant does not contend that the Government, without more, is under an obligation to search out and produce witnesses who may be favorable to the defense. He does contend, however, that it is a denial of due process if such witnesses have been made unavailable by the conduct of the Government."

It was further stated on page 5 of 450 F. 2d 1 that:

> "Appellant concedes that he is unable to show that the witnesses in question would have offered testimony favorable to the defense. Such statement is understandable in view of the fact that appellant was, by Government action, deprived of the opportunity to interview said witnesses. Appellant couldn't know what these witnesses might say, if anything. We are in the same posiion as the appellant. We decline to indulge in any speculation that the interviews would, or would not, have been fruitful to the defense."

The pre-trial evidentiary hearing as to this issue showed negligence on the part of the government. Whether the authorities deliberately did this or not is irrelevant, and in the bureaucratic maze presented, it would be impossible to show any deliberate suppression of Otvos as a witness.

As a matter of fact the findings of the Court below in this respect were that the Parole Board was grossly negligent (193). However the Court also found that there was no negligence on the part of the United States Attorney's office or the agencies (193, 194).

It is submitted that if the United States Attorney went to Court for a conviction, the Government of the United States was represented by such United States Attorney and the Department of Justice. As was held in Giglio v. U.S., 405 U.S. 150,(1972), at page 109:

> "In the circumstances shown by this record, neither... authority nor his failure to inform his superiors or his associates is controlling. Moreover, whether the non-disclosure was a result of negligence or design, it is the responsibility of the prosecutor. The prosecutor's office is an entity and as such it is the spokesman for the Government. ..."

Furthermore, representatives of the Department of Justice were in contact with Otvos and a study was being made of his background and his relationship with organized crime (109-111). It would have been a telling defense before the jury to have presented proof through Otvos that he and his brother, or whatever Gallic compatriots were supposed to have a role in the Perna-Verzino multi-national venture, did not exist or if existing, were not participants. True Otvos was a defendant. But Otvos may have elected to take the stand himself. If he didn't elect he could have been called as a witness in the event there was a severance. And certainly a motion for a severance would have been proper. There was ample testimony at the hearing that Otvos denied any complicity and denied any involvement.

POINT IV:

THE COURT'S COMMENTS THAT THE PROSECUTION WAS FOUNDED ON THE PROSECUTOR'S BELIEF THAT THE DEFENDANTS WERE GUILTY, PREJUDICED THE APPELLANT'S RIGHT TO A FAIR TRIAL AND THE MOTION FOR A MISTRIAL SHOULD HAVE BEEN GRANTED.

On page 375 of the Appendix, one of the defense attorneys moved for a mistrial because of the Court's comment in Court that the prosecution thought that the defendants were guilty and hence instituted this action.

In this case, the facts were sharply in dispute. The appellant presented a testimonial defense through himself and witnesses. The evidence against all the defendants came mainly through the disreputable partners of Perna and Verzino. The lurid background of the case with the activities in an institution, the threats of violence and all the other sordid aspects of the narcotics prosecution, necessitated the most extreme caution so that the jury could fairly appraise the evidence.

It is put that the statements of the trial judge which tend to prejudice the jury violate the rule that neutrality and detachment are required in the judicial management of a trial. The high position of the Court and the respect due to it, and certainly the respect given to it by laypeople, require neutrality lest the prestige of the Court influence the jury. In this case the statements of the Court added the Court's position to the Government's case. See Palno v. U.S., 58 F. 2d 111 (Cir. 8th, 1932) holding

that while a Federal judge can make some comments such should not be in the nature of an argument or partisan position. It was ordered that the comments should be full and dispassionate and the Court should not, by its comments, give rise to an inference that it is not neutral.

The Court did render a curative instruction to the jury (377-382). However because of the sordidness of this case, it is suggested that the impression left with the jury either was not obliterated or could not be obliterated. See U.S. v. Salazar, 293 F. 2d 442 (Cir. 2d, 1961) where the Court inquired of a defendant when he was testifying whether he thought that the U.S. Attorney or the Post Office Inspectors were concocting a case against him. This Court reversed a conviction holding that the curative instruction to the jury did not undo the prejudice. In U.S. v. Woods, 252 F. 2d 334 (Cir. 2d, 1958), this Court held that where a Court's comments are extremely prejudicial a curative insturction to the jury was ineffective.

It can be recognized that jurors may not always be able to follow the instructions of the Court. See Bruton v. U.S., 391 U.S. 123 (1968).

POINT V:

THE PROSECUTOR'S SUMMATION EXCEEDED THE BOUNDS OF FAIR COMMENT.

The prosecutor's first summation commences at page 794 of the Appendix. At page 831 the prosecutor stated to the jury that the witnesses who testified for the Government were telling the truth, and he referred to the "deals" with the Government that were "conditioned" on those witnesses telling the truth, (831, 832, 833). The prosecutor not only referred to the Government witnesses, as to telling the truth, but told the jury that a sentencing judge would consider in imposing a sentence whether the Government witnesses "perjured themselves" (833). The second summation of the prosecutor in rebuttal commences at page 1012 of the Appendix. Again the Government referred to the fact that the Government witnesses had a "deal" (1019). That the Government witnesses "got a gun at their heads" (1019). The prosecutor told the jury that the truth was the only way out for Perna and Verzino; that the Government told them to tell the truth and that deals were made "conditioned on telling the truth" and that the easiest way out for the Government witnesses was to tell the truth (1019).

Again, in rebuttal, the prosecutor told the jury that when the Government witnesses were sentenced, the Court would take into consideration "what these witnesses have done... That's what their deals require, that the Court be told all the crimes they have done, the Court be told everything about them." (1020).

It is respectfully submitted that the inference flowing from this type of summation was that if the jury acquitted the defendants then Verzino and Perna would be deemed perjurers. In other words, the future of Perna and Verzino depended on a conviction of the defendants. Furthermore, the prosecutor by referring to a "deal" with the Government in effect endorsed the truth of the testimony of Perna and Verzino.

As a matter of fact, this was "vouching" for the veracity of the Government witnesses, in the most extreme way. See U.S. v. Phillips, 527 F. 2d 1021 (Cir. 7th, 1975), where the prosecutor in summation told the jury that if the defendants were acquitted the jury would be adjudging the Government as violating the civil rights of the defendants. That the jury would be finding that the Government attorney conspired with a Government agent. That if a Government agent were not believed, the jury would be finding that the Government agent was committing a crime (at pages 1022, 1023).

Accordingly, the conviction in that case was reversed.

In U.S. v. Drummond, 481 F. 2d, 62 (Cir. 2d, 1973), in reversing a narcotics conviction because of the inflammatory summation by a prosecutor, this very Court stated on pages 63 and 64 that:

"The prosecutor attempted to bolster the testimony of Government witnesses by implying that the association of a witness with the Government was a guarantee of credibility and by expressing his personal opinion that the testimony of the Government witnesses was to be believed..."

The prosecutor in that case was criticized because his summation as the summation in this case related to the fact that the defense would have the Government concocting evidence to convict the accused.

POINT VI:

THE APPELLANT JOSEPH STASSI, PURSUANT TO RULE 28(i) OF THE FEDERAL RULES OF APPELLATE PROCEDURE, RESPECTFULLY ADOPTS ALL POINTS ADVANCED BY THE CO-APPELLANTS IN THIS CASE, INSOFAR AS THOSE POINTS ARE APPLICABLE TO THE APPELLANT'S APPEAL.

CONCLUSION:

IT IS RESPECTFULLY SUBMITTED THAT THE JUDGMENT OF CONVICTION APPEALEF FROM SHOULD BE REVERSED.

Respectfully submitted

ARNOLD E. WALLACH
Attorney for Appellant
JOSEPH STASSI

Dated: June 29, 1976

WALLACH

STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 280 Richmond Avenue, Staten Island, N.Y. 10302. That on the 1 day of July 197 deponent served the within Brief upon:

U.S. Atty., So. Dist. of N.Y.

attorney(s) for Appellee

in this action, at

1 St. Andrews Plaza, NYC

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

Robert Bailey

Sworn to before me, this 1
day of July, 197

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1977